



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY DEVELOPMENTAL TEST COMMAND
314 LONGS CORNER ROAD
ABERDEEN PROVING GROUND MD 21005-5055



CSTE-DTC-TT-B

JUN 16 2003

MEMORANDUM FOR Commanders, DTC Test Centers

SUBJECT: Test Policy Bulletin No. 5-03, Commercial Use of US Army Developmental Test Command (DTC) Test Centers

1. References:

- a. Memorandum, OUSD(A&T), 17 Apr 97, subject: Interim Draft Department of Defense Guidance Implementing 10 U.S.C. 2539b, "Authority to Sell."
- b. Memorandum, TECOM, AMSTE-TM-O, 16 Aug 99, subject: Delegation of Authority to Enter Into Contracts with Commercial Customers.
- c. Memorandum, DTC, CSTE-DTC-TT-B, 29 Mar 01, subject: Delegation of Authority to Allow for Commercial Use of the Major Range and Test Facility Base (MRTFB).
- d. Memorandum, USASAC, 8 Oct 97, subject: Testing for Foreign Private Entities or Private Entities with Foreign Interests.
- e. Memorandum, OUSD(A&T), 31 Jan 95, subject: Current Guidance for the Use of Test Ranges by Foreign Governments or Companies.

2. This policy bulletin supersedes Test Policy Bulletin 1-00, subject as above. The basic policy for commercial use of DTC test centers has not changed; however, this bulletin is being updated to provide DTC personnel with current and comprehensive guidance to ensure that testing for commercial entities is conducted according to governing laws and regulatory guidance. This bulletin will serve as transitional guidance until such policy can be incorporated into appropriate DTC regulations and pamphlets.

3. The DTC policy for performing tests for commercial entities depends upon the contractual relationship the company has with the Department of Defense (DOD). A commercial entity is defined as any US commercial user (a profit-making organization or individual), or a non-Government-sponsored university.

a. Not Under Contract with DOD. Testing performed for commercial entities, which does not support an existing contract with a DOD agency, represents work for which DTC is providing a "service" to a commercial entity. Often these are referred to as private industry tests as the test items are not items typically found in the military inventory but those found in private industry.

(1) DTC enters into a contract with the commercial concern for the requested testing when all terms of testing have been agreed to and it has been verified that we are not competing with private sector test facilities (see paragraph 7, below). Once both parties have signed the

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contract, the test is established in the Test Resource Management System (TRMS) as sponsored and funded by private industry.

(2) Formal safety and environmental documentation may not exist as in a US Government test (e.g., Safety Assessment Report (SAR) and Record of Environmental Consideration (REC)); however, test centers are still required to address both areas before testing is performed. Early in the negotiation stage, test centers should obtain as much information as possible so that sound judgments can be made concerning the test services to be performed under the contract. The risk assessment document (addressing safety) and the site-specific document (addressing environmental issues) should be prepared according to local standard operating procedures.

b. Under Contract with DOD. DTC also performs testing for commercial entities that supports an existing contract the commercial entity has with DOD, typically supporting the materiel acquisition process. In the past, this testing was requested and funded by the DOD agency; however, the number of commercial entities (government contractors) negotiating directly with (providing funds directly to) the test centers has increased. Since the Miscellaneous Receipts Statute prohibits DTC from retaining funds received directly from a commercial concern, test centers must enter into a contract with the commercial company in order to retain the funds received. Every effort should be made to encourage the DOD organization to request the testing on behalf of the private company and provide direct funding for the requested testing. If this is not possible, a contract must be initiated.

(1) Once the terms of testing have been agreed to and both parties have signed the contract, the test is established in TRMS as a test requested by a commercial concern and funded (sponsored) by the DOD organization. Regardless of how the test is identified in TRMS, the contract is still a test for a commercial concern, paid with funds provided by the commercial concern; therefore, the company is treated no differently than the commercial companies described in paragraph 3a, above.

(2) Since tests performed under these contracts could have a significant impact on other ongoing Government testing supporting the acquisition process, test centers should contact the headquarters test manager early in the negotiations. This early contact will also help to ensure that appropriate safety and environmental documentation is on-hand prior to test initiation. Test centers should contact the headquarters Test Business Management Division, ATTN: CSTE-DTC-TT-B, DSN 298-1417, for name(s) and phone number(s) of assigned test managers, if not known.

c. Test centers must be aware of the distinction between the above two types of testing. Currently, only testing performed for commercial concerns under contract with a DOD agency is considered in the allocation of PE 65601 funds. Testing performed as a "service" for a commercial concern, and not supporting an existing DOD contract, is not considered in the allocation of PE 65601 funds. DTC Form 2000-R (enclosure 1) will be used by the test center to provide information to Headquarters, DTC, along with specific test information necessary for establishment of a DTC project in TRMS.

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4. Authority. Currently, the authority to allow DTC test centers to conduct business with commercial concerns is dependent on whether or not the test center is designated as a Major Range and Test Facility Base (MRTFB) facility.

a. Non-MRTFB: Section 2539b of Title 10, U.S.C., "Availability of samples, drawings, information, equipment, materials, and certain services." This statute, as amended by the National Defense Authorization Act for FY96, provides the Department of Defense with the authority to sell test services to commercial concerns. Currently, this is the only authority that allows non-MRTFB installations to perform testing for commercial entities when in the interest of national defense. The implementing guidance (reference 1a) delegated this authority to the directors or commanders of those government facilities "subject to direction or control by a higher office." Reference 1b provides the authority for commanders/directors of non-MRTFBs to sign all contracts entered into with commercial entities.

b. MRTFB: Section 2681 of Title 10, U.S.C., "Use of test and evaluation installations by commercial entities," governs the MRTFB. DODD 3200.11, Major Range and Facility Base (MRTFB) (paragraph 3.1.3), provides the DOD implementing guidance, and permits other US Government agencies, state and local governments, allied foreign governments, defense contractors, and US commercial entities to use MRTFB facilities. Through a series of delegations, this authority was delegated to the DTC MRTFB Commanders, without any dollar limitations (reference 1c).

c. Purpose: The purpose of this authority is to promote research and development within the commercial sector of the US economy, transfer technology from the military to the commercial sector, and provide increased access to DOD test and evaluation facilities by US commercial users, as well as non-DOD Government users. However, there must not be any competition with the commercial sector. Neither of the statutes authorizes the performance of other than test and evaluation services and industrial operations integral to the test and evaluation service. Test centers do not have the authority to perform industrial operations or provide other services on a "stand-alone" basis.

5. Contract. DTC Form 2001-R (enclosure 2) is the formal contract to be used when performing test services for, and accepting funds directly from, commercial entities and will be used for all contracts. All contracts, and certain changes discussed below, should receive a legal review prior to signature. Test centers desiring to use a computer-generated contract should exercise controls to ensure accuracy of the contract and assist in the legal review.

6. Changes to Contracts/Scope of Work Increases. At times the commercial entity may wish to change the scope of the original contract by changing the number of test items/ammunition lots or adding additional test requirements. These changes impact the cost of the contract and may impact acquisition schedules. Changes of scope for tests supporting an existing Government contract should be coordinated with the DTC headquarters test managers. To assist test centers in determining whether to amend the original contract or initiate a new contract, the following DTC legal guidelines are provided:

a. A new contract will be completed when the scope of work changes (i.e., new requirements). The legal review (required for new contracts) will ensure that the change truly involves a matter that is appropriately called a test and authorized by statute. The single contract is clearer and

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more concise than a contract with multiple changes that needs to be reviewed and signed each time.

b. Modifications to contracts that have already received legal review may be made to address changes to number of test items or lots if the scope of testing has not changed. Since these contracts do not address any new test issues, legal review is not required.

7. Competition. DTC test centers will not compete, or be perceived as competing, with the commercial sector for the provision of test services.

a. Each test center must ensure that appropriate checks are built into the review process to answer any charges of competition that could arise. Prior to acceptance of commercial work, test centers will verify that competition with the commercial sector is not involved. If it is decided to accept the work, a determination and findings (D&F) will be made and approved by the test center commander. A sample D&F is provided at enclosure 3. Nominal compliance with this requirement is achieved through use of the standard contract that contains a clause by which the commercial entity receiving the services and DTC certify that comparable services are not readily available in the commercial sector.

b. MRTFB commanders performing tests/test services for commercial entities without a contract with a DOD agency will follow DOD policies regarding competing with the private sector. This guidance does not apply to defense contractors performing work in support of DOD contracts. A summary of these procedures follows:

(1) Maintain a compendium of the MRTFB's own technical facilities, services, and capabilities. Provide to commercial entities upon request for test and evaluation services. The compendium may be in electronic form.

(2) Determine the nature of anticipated commercial work. At least once a year, publish a notice in the Commerce Business Daily (CBD). Notice should be published prior to the start of each fiscal year and any other time deemed appropriate by the MRTFB commander.

(3) The CBD notice will describe the nature of the anticipated commercial work and invite private sector expressions of capability to perform these test and evaluation services.

(4) Establish a file of private sector responses to the CBD notice and retain for a period of not less than 12 months. Prior to any contract negotiations, provide the file and any knowledge of other private sector capabilities to prospective commercial customers for use in determining whether private sector enterprises may be able to satisfy their requirements.

(5) Require prospective commercial customers to submit a written statement, with supporting documentation, that alternative private sector facilities are not available or are unacceptable to perform the work required. This must be accomplished before entering into a contract with the commercial entity or granting access to MRTFB services. Lower cost of an MRTFB facility or capability is not an acceptable basis for a commercial customer to request use of MRTFB facilities (in lieu of those available in the private sector). However, timely access may constitute a valid customer requirement since schedules are often critical to the success or failure of a commercial product in the marketplace.

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(6) Review written statements and supporting documentation provided by the prospective commercial customer against those guidelines addressed above. This review is to be accomplished by the MRTFB commander and contracting officer (or their equivalents) prior to signing a contract for commercial work.

(7) Maintain records of all requests for commercial use of the MRTFB for a period of at least 12 months following completion of the contract for testing.

8. Reimbursable Costs and Use of Institutional Funds.

a. DOD 7000.14-R, Financial Management Regulation, provides policy for charging for testing and test services. Refer to Volume 11A, Chapter 12 for MRTFB facilities and Chapter 14 for non-MRTFB facilities.

b. Defense contractors will be charged as commercial customers, unless the defense contractor has appropriate language in their contract with the DOD contract sponsor that provides the use of test support from the MRTFB facility as Government-furnished services. The following procedures apply:

(1) The MRTFB should first make an effort to encourage the DOD sponsor to request the testing on behalf of the defense contractor and to provide direct funding for the requested testing.

(2) If this is not successful, the MRTFB facility will request documentation of appropriate contractual language from the defense contractor early in the negotiation stage (i.e., when preparing the budgetary cost estimate of the test). This documentation must be provided to the MRTFB prior to signing of the contract and be kept on file should the MRTFB be audited.

(3) If appropriate contractual documentation is not provided, the MRTFB facility will charge the defense contractor at the same rate as any other commercial customer.

c. DTC test centers may retain the fees received from commercial users for providing test and evaluation activities.

9. Providing Support to Foreign Governments/Commercial Concerns. The following guidance is provided to assist test centers in handling inquiries from foreign commercial concerns and foreign governments.

a. According to the OSD implementation guidance for both governing laws, DTC test centers are prohibited from providing test services to foreign companies, unless those services are provided through Foreign Military Sales (FMS) channels and at FMS rates. Even if the foreign company has a contract with a US DOD organization, test centers are prohibited from entering into a contract with that foreign commercial entity and should encourage the DOD sponsor to request the testing and provide direct funding. According to guidance from the US Army Security Assistance Command (USASAC), reference 1d, test centers receiving requests from foreign commercial companies should advise the company to "submit their request through their respective government's Security Assistance channels" to USASAC.

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b. If there is a partnership between a US and foreign commercial company that involves testing of products with US content, test centers should only deal with the US commercial company per OSD guidance (reference 1e). This partnership should involve contributions by both partners that are meaningful in the context and do not represent simply a pass-through of range services from a US to a foreign entity.

c. Foreign government use of US ranges remains subject to the US Arms Export Control Act, which requires such use through FMS (notwithstanding the US content of the equipment being tested). The exception is testing provided through the DOD Test and Evaluation Program (TEP) Cooperation. Currently, DOD has Memoranda of Understanding (MOU) in place with Canada, Australia, and France.

10. Providing Testing Services at the Commercial Entity's Facility. MRTFB test centers are prohibited from providing test services at locations other than the MRTFB facility since the governing statute (10 U.S.C. 2681) only addresses use of the range for testing and makes no provision for conducting tests at other facilities. Non-MRTFB test centers, however, may provide testing services since the governing statute (10 U.S.C. 2539(b)) contains no language limiting services to those on site. If the MRTFB facility wants to participate in testing off the range, they may be able to do so under the statute of non-MRTFB; however, there are caveats and this provision should be used very sparingly. The test center would be doing it as an Army organization capable of conducting tests and not in their capacity as a Major Range; therefore, there is no flexibility when it comes to charging less than full costs (direct and indirect). Commanders of MRTFB facilities are reminded that the implementing guidance (reference 1c) states that Section 2539b and its implementing guidance are not intended to supplant the authority of Section 2681. Therefore, MRTFB commanders should follow the provisions of Section 2681.

11. Reporting of Test Results. Distribution of test data/results will be according to the request of the test sponsor. Secondary distribution will not be made without the consent of the entity that paid for the test services.

12. Documentation. To assist test centers in the contract process for commercial work, a checklist (DTC Form 2002-R) is at enclosure 4. This checklist and the required documentation should be maintained at the test center as well as forwarded to Headquarters, DTC, ATTN: CSTE-DTC-TT-B, when requesting TRMS project assignment. Test centers are reminded to allow sufficient time for Headquarters processing, TRMS number assignment, and project activation when developing their test schedules.


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13. The DTC points of contact for this policy bulletin are Mr. Raymond G. Fontaine, CSTE-DTC-TT-B, ttb@dtc.army.mil, DSN 298-1425, and Mrs. Diana L. Reeves, CSTE-DTC-TT-B, ttb@dtc.army.mil, DSN 298-1441.

FOR THE COMMANDER:

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